IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 384 of 1993.

Date of Decision: 20-12-2007.

State of H.P. ……..Appellant.

Versus

Ram Saran. ……..Respondent

Coram

Hon'ble Mr. Justice Surjit Singh, J.

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? .No.

For the appellant : Mr. S.D. Vasudeva, Additional Advocate General with Mr. D. S. Nainta, Deputy Advocate General.

For respondent : Mr. G.D. Verma, Sr. Advocate with Mr. Romesh Verma, Advocate.

Surjit Singh, J. (oral)

Respondent was charged with and tried for offences punishable under Section 307, I.P.C. and Section 27 of the Arms Act, 1959 by the Sessions Court and was ultimately acquitted. State has appealed against the judgment of acquittal.

According to the prosecution, respondent was posted as Constable at Police Post, Sairi of Police Station Kandaghat in the year 1990. Harbans Singh (PW12) was also posted as Constable in that very Police Post. Jamita Ram (PW3), Assistant Sub Inspector was the Incharge of the Police Post. On 27-9-1990, around 9.45 p.m, Krishan Kumar (PW2) Head Constable, who was those days staying in one of the quarters attached to the Police Post Sairi, heard the sound of firing of four-five gun shots which emanated from out side his quarter. He immediately came out and noticed that the respondent was standing with revolver in his hand. He also saw Harbans Singh (PW12) running away towards the Civil Dispensary and crying "Menu Goli Mar Diti". He returned to his quarter and

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Whether reporters of the Local papers are allowed to see the judgment? Yes.

woke up two constables named Badri and Sunder who were present with him in his quarter and then rushed to the Civil Dispensary Sairi. There after he informed Police Control Room at Shimla. Station House Officer Police Station, Boileauganj Chander Shekhar (PW4) reached the spot. On being told by the Doctor that the life of Harbans Singh (PW12) could be saved if he was taken to Shimla for specialized treatment, said Chander Shekhar (PW4) brought Harbans Singh to Indira Gandhi Medical College, Shimla. Around 1.00 a.m, Basheer Singh (PW13), S.H.O. Police Station, Kandaghat reached the spot. He called A.S.I. Jamita Ram through Constable Chet Ram. At 3.15 a.m, he recorded the statement of PW2 Krishan Kumar Exhibit PW2/A and sent the same to the Police Station for formal registration of the case. Case was registered vide FIR Exhibit PW13/B.

Harbans Singh was medically examined at Indira Gandhi Medical College, Shimla on 28.9.1990 at 2.45 a.m. and the following injures were noticed on his person by Dr. A. Banarjee (PW1):

> "1. Oval wound 1.5 cm x 1.c.m. diameter on right mid clavicular line 12 cm to the right of xiphoid process. Edges are blackened and fatty subcutaneous tissue coming out of the wound. No tattooing seen. Wound already cleared by local Doctor at Sairi. There is a fresh blood from the wound. Surrounding 1.c. to the right of the wound is abraded and is bright red in colour.
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> 2. Small sharply margined wound 1. c.m long in right real area (lumber) 15 c.m. above right posterior superior iliac spine. No gaping of the wound of the edges. Fresh bleeding present. Associated soft tissue swelling around 10 cm x 10 c.m. of this wound present. No abnormal staining seen".

According to the opinion of the Doctor, injuries were dangerous to life. Harbans Singh injured remained unconscious for quite some time. It appears that he regained consciousness on 11.10.1990. On that day, his statement, under Section 161 of the Code of Criminal Procedure, was recorded. In the said

statement, he named the respondent as the person who fired the shots at him from the service revolver.

During the course of investigation, respondent produced a revolver along with twenty five live and five shells of spent cartridges in the presence of PW3 Jamita Ram, Assistant Sub Inspector. The revolver and the five shells of spent cartridges were sent to the Ballistic Expert, who opined that the same had been fired through the revolver, in question.

Investigation revealed that though the revolver had been issued to Jamita Ram, A.S.I. (PW3), yet he used to keep it in the Malkhana which was under the charge of the respondent. On the completion of the investigation, respondent was challaned. The trial Court charged and tried him, as aforesaid, and ultimately acquitted him. Reasons given by the trial Court for acquittal of the respondent are that the evidence on record, i.e, the entries in the Roznamcha show that the revolver had been issued to Jamita Ram on 27.6.1990 and thereafter he never deposited the same in the Malkhana and thus, it was supposed to be with him (PW3 Jamita Ram) and if it is so, respondent did not have any opportunity of holding and using it. Trial Court has also observed that a bullet that was recovered from the wound of Harbans Singh (PW12) by the Doctor, namely Dr. S.S. Minhas (PW10), had not been sent to the Expert for seeking his opinion if the same was fired through the revolver, in question, or not.

We have heard learned Additional Advocate General and gone through the record.

We see no reason to dis-agree with the finding of the trial Court that as per record, the revolver was supposed to be with Jamita Ram (PW3) A.S.I. at the time when the incident took place because as per the testimony of Bahseer Singh, S.H.O. (PW13) who appeared as a witness along with Roznamcha of the Police Post, the revolver and the ammunition had been got issued by PW3 from the Malkhana of Police Post Sairi on 27.6.1990 and thereafter he never deposited the

same in the Malkhana, because there was no entry to that effect in the Roznamcha.

It has come in the evidence that even though PW13 Basheer Singh reached the place of incident, i.e, village Sairi at 1.00 a.m. in the night, he recorded the statement of Krishan Kumar Constable (PW2) at 3.15 a.m. Even this time of 3.15 a.m. has been re-written over 3.35 a.m. Why should have PW13 taken such a long time to record the statement of PW2 Krishan Kumar, under Section 154 of the Code of Criminal Procedure. This long time gap between the arrival of PW13 S.I. Bahseer Singh on the spot and recording the statement under Section 154 of the Code of Criminal Procedure, was enough to make variations and embellish and colour the true version.

From the record, it can be made out that the statement of Krishan Kumar (PW2) Exhibit PW2/A may not be the earliest version of the incident. While in the witness box, PW2 stated that he had reported the incident telephonically to the Police, Control Room, Shimla. It has come in the evidence that from the Police Control Room, Shimla, a message was flashed to Police Station, Boileauganj and the Station House Officer of that Police Station, namely, Chander Shekhar (PW4) rushed to the spot and arranged to bring the injured to Indira Gandhi Medical College, Shimla. The report which PW2 Krishan Kumar made to the Police Control Room Shimla is supposed to have been entered in the Roznamcha maintained in the said Control Room. The same has been with-held by the prosecution. No explanation for with-holding the same has come forth.

We also find some contradictions and infirmities in the testimony of Jamita Ram (PW3) and Harbans Singh (PW12) injured, which go to show that they have suppressed the truth for the reasons best known to them. Jamita Ram (PW3) A. S.I. Police Post, Sairi, was at his quarter situated very close to the site of the incident, at the time when the incident took place. Time was 9.45 p.m. To the Police he stated that he had left for his quarter at 8.15 P.M. However, while in the witness box, he denied that he went to his quarter at 8.15 p.m. It is strange

enough that when PW2 Krishan Kumar could have heard the sound of gun shots, PW3 Jamita Ram whose residential quarter was also situate close to the site of the incident did not hear such a sound. Jamita Ram denied in the cross-examination that he had consumed liquor in the company of Harbans Singh (PW12) as also the respondent on the evening of 28.9.1990 though he himself disclosed this fact to the Police in his statement under Section 161 Cr.P.C (Mark-A vide portion 'A' to 'A'). In fact, he was found drunk even on the next morning, when he was got medically examined by Basheer Singh (PW13). His blood and urine samples were sent to the Chemical Examiner, who vide report Exhibit PW13/H, opined that the same contained alcohol. The fact that blood and urine samples of Jamita Ram (PW3) were also taken and sent to the Chemical Examiner suggest that the Police suspected this witness also to be involved in the commission of crime.

We have noticed herein above that the time of recording the statement of Krishan Kumar Exhibit PW2/A has been changed from 3.35 to 3.15.a.m. Reason appears to be that even before recording of this statement, Ram Saran respondent had been got medically examined at 3.20 a.m., per medico legal report Exhibit PW14/A.

PW12 Harbans Singh testified that he had gone to his quarter on the fateful night when around 9.45 P.M, the respondent called him by shouting his name and that when he went close to him and asked whether he had been called for being deployed on some duty, he fired five shots from the revolver at him and two of such shots hit him on the stomach, just below the chest. To the Police, vide statement Exhibit PW13/A, portion 'B' to B' he stated that he went towards the Police Post from his quarter on his own for strolling and that when around 9.45 P.M., he was behind the office of the Police Post near the barracks, he saw Ram Saran standing there with revolver in his hand and he fired four-five shots at him. He has not explained this material contradiction in his testimony in the Court and the statement Exhibit PW13/K made to the Police.

Krishan Kumar (PW2) was under obligation of Jamita Ram (PW3) at the relevant time because he has admitted that even though he was not posted in Police Post Sairi and instead he was posted at the Airport, and had been allowed to stay in one of the quarters, by A.S.I. Jamita Ram un-officially.

In view of the above said position, we do not think the view taken by the trial Court is not reasonably possible on the basis of the evidence on record or that the same is perverse. Hence the appeal is dismissed.

(Surjit Singh)
Judge.

(Surinder Singh)
Judge.

December 20, 2007.
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